

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS (Worcester)**

Anthony Campbell,)	
)	
Plaintiff,)	
vs.)	
)	Case No. 04-40236 FDS
)	
Isolation Technologies, Inc.)	
Larry D'Amato)	
Defendants)	

MOTION OF DEFENDANT, ISOLATION TECHNOLOGIES, INC.,
(1) FOR SANCTIONS AGAINST PLAINTIFF, ANTHONY CAMPBELL, FOR
FAILURE TO ATTEND OWN DEPOSITION,
(2) FOR ORDER TO ATTEND OWN DEPOSITION, AND
(3) TO EXTEND SCHEDULING ORDER TO ACCOMMODATE DEPOSITION OF
PLAINTIFF
Fed.R.Civ.P. 37(d)

Defendant, Isolation Technologies, Inc., pursuant to Fed.R.Civ.P. 37(d), hereby moves this Court to compel the Plaintiff, Anthony Campbell to appear for his deposition by the Defendant at a time reasonably convenient to the parties; and for sanctions as requested below; and to extend the Scheduling Order sufficient to allow Defendant to take Plaintiff's deposition. For reasons, Defendant states as follows:

1. On June 24, 2005, the undersigned counsel for the Defendant served a "Notice of Taking Deposition of Anthony Campbell" (hereinafter, the "Deposition Notice") on said Plaintiff by first class mail, postage prepaid, at the address on record with the Court in this matter. A copy of the Deposition Notice and accompanying cover letter are attached hereto as Exhibit A.
2. The Deposition Notice was proper and properly served on Plaintiff.
3. The Deposition Notice notified the Plaintiff that his deposition was scheduled to take place at the offices of the undersigned attorney for Defendant at 10:00 AM on Thursday, July 7, 2005.
4. The undersigned placed a reminder telephone call to Plaintiff on Wednesday, July 6th, to the number on record with the Court in this matter, leaving a message on an automated answering machine.
5. Plaintiff failed to appear for his own deposition in response to the Deposition Notice.
6. The undersigned attempted to discuss Plaintiff's failure to attend his deposition and to confer on this issue, however, was only able to leave a message at his telephone number on record with the Court in this matter, before noon on the scheduled deposition date.
7. Under the existing Scheduling Order, the deadline for fact discovery is July 8, 2005.

8. Although the undersigned attempted to confer with the Plaintiff on this matter, a conference prior to filing this motion is not required pursuant to Fed.R.Civ.P. 37(d) for failure to attend one's own deposition, there being no "discovery dispute" to be addressed.
9. Plaintiff earlier failed to provide Rule 26(a) disclosure in accordance with the Scheduling Order and further failed to confer on the matter. Accordingly, Defendant's Motion to Compel Plaintiff's Rule 26(a) Disclosure and For Sanctions is presently pending before this Court.

Now therefore, the Defendant, Isolation Technologies, Inc., prays that this Court order as follows:

- i. That the Plaintiff's Complaint be dismissed for failure to appear at his duly noticed deposition;
- ii. That this Court allow the Defendant to take the Plaintiff's deposition beyond the existing deadline for fact discovery;
- iii. That the Plaintiff be ordered to appear for his deposition at a time reasonably acceptable to the parties and within such deadline as shall be set by this Court;
- iv. That the Plaintiff be ordered to pay Defendant's reasonable attorney's fees incurred in preparing and bringing this motion before the Court, in the amount of \$460.00, representing two (2) hours at a rate of \$230.00;
- v. That the Plaintiff be ordered to pay any stenographer costs incurred as a result of Plaintiff's failure to appear for his deposition;
- vi. That the Plaintiff be required to pay any and all aforesaid costs before Defendant is required to take further action in this defense.
- vii. That this Court order such other relief as it deems just and proper.

Respectfully submitted,

Isolation Technologies, Inc.

By its attorneys:

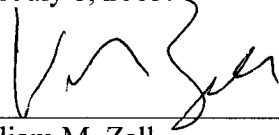


William M. Zall, BBO #554135
CUNNINGHAM, MACHANIC,
CETLIN, JOHNSON, & HARNEY LLP
220 North Main Street
Natick, MA 01760
TEL:(508) 651-7524
FAX:(508) 653-0119

Dated: July 8, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was served upon the Plaintiff, Anthony Campbell, appearing pro se by first class, pre-paid mail on July 8, 2005.



William M. Zall

239670